IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Thomas Joseph Coyne, Plaintiff, vs. South Carolina Secretary of State and South Carolina Republican Party, Defendants.	Civil Action No. 3:15-cv-3669-JFA-SVH

DEFENDANT SOUTH CAROLINA REPUBLIC PARTY'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION/RULE 12(b)(6) MOTION TO DISMISS

STATEMENT OF THE NATURE OF THE CASE

The *pro se* plaintiff in this case challenges the authority of the State of South Carolina and the South Carolina Republican Party (hereinafter "SCGOP") to establish legitimate procedures for the presidential primary election process to assure that fragmentation of voter choice is minimized. The specific procedure challenged here is the filing fee for candidates in the South Carolina Republican Party 2016 Presidential Primary election (hereinafter "SCGOP primary"). As stated by the United States Supreme Court, the function of enhancing voter participation and understanding "is served, not frustrated, by a procedure that tends to regulate the filing of frivolous candidates." *Lubin* v. *Panish*, 415 U.S. 709, 715461–62 (1991).

In this case, Plaintiff erroneously alleges that the candidate filing fee for the SCGOP primary is a "poll tax." However, Plaintiff has not provided any legal authority in support of his baseless claim, and he has failed to carry his burden in seeking preliminary injunctive relief.

Accordingly, Plaintiffs' motion should be denied and his action should be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), Fed.R.Civ.P.

STATEMENT OF THE FACTS

Candidates in the SCGOP primary are required to submit a $40,000.00 filing fee to the Party. Pursuant to S.C. Code § 7-11-20, half of that filing fee goes to the South Carolina State Election Commission for the costs associated with conducting the statewide primary election. The remaining portion of the candidate filing fee is used for costs incurred by the SCGOP in conjunction with voter outreach, promotion, party building, and other legitimate political activities associated the primary election. No fee or any other charge is assessed to any registered voter who wishes to cast a ballot in the SCGOP primary.

Plaintiff is a citizen and resident of Ohio. He is not a registered voter in South Carolina. According to his pleadings, Plaintiff seeks to have his name placed on the SCGOP primary ballot, but he is unwilling to pay the candidate filing fee. Importantly, Plaintiff states in his pleadings that he is "NOT claiming inability to pay;" rather, he is "stating unwillingness to pay a poll tax." Plaintiff asks this Court to declare that the candidate filing fee for the SCGOP primary is a poll tax.

QUESTION PRESENTED

Has Plaintiff established that he is entitled to a preliminary injunction enjoining the SCGOP primary?

ARGUMENT

I. THE STANDARD FOR PRELIMINARY INJUNCTIONS

Courts issue preliminary injunctions to preserve the *status quo* pending litigation. As the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit have stated: "[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the

parties until a trial on the merits can be held." *United States v. South Carolina*, 720 F.3d 518, 524 (4th Cir. 2013) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981)). "The traditional office of a preliminary injunction is to protect the status quo and to prevent irreparable harm during the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits." *Id.* (quoting *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 525 (4th Cir. 2003)).

To obtain preliminary injunctive relief, Plaintiff must make a "clear showing" that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary injunctive relief; (3) the balance of equities tip in his favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 12 (2008). All four elements must be satisfied. *Id.* Under this standard, Plaintiff has the demanding burden of "clear[ly] showing" that he is likely to succeed on the merits.

Plaintiff's motion for a preliminary injunction must be denied for two fundamental reasons. First, Plaintiff is not seeking to preserve the *status quo*; rather, he is asking this Court to alter the current *status quo* and enjoin the enforcement of laws and procedures that have already been implemented in South Carolina. Second, the motion should be denied because Plaintiff has failed to make a clear showing that *any* of the four necessary elements that are required for a preliminary injunction are present, starting with a clear showing of a likelihood of succeeding on the merits.

II. PLAINTIFF IS NOT LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM.

Plaintiff's arguments cannot withstand legal scrutiny. Far from demonstrating that he is likely to succeed on the merits, Plaintiff simply engages in *ad hominem* attacks against the SCGOP and individual candidates and officials without any basis in fact or law. Furthermore, Plaintiff has failed to establish any violation of the United States Constitution or the Voting Rights Act.

Plaintiff's central argument is that the candidate filing fee for the SCGOP primary is a poll tax. Of course, it is axiomatic that poll taxes are unconstitutional under the Equal Protection Clause of the 14th Amendment. It is clear that the right to vote may not constitutionally be conditioned upon the payment of a tax or fee. However, it is also clear that the right to vote in the SCGOP primary is not conditioned on the payment of a tax or fee of any kind, and in fact the Plaintiff makes no such allegations. Rather, Plaintiff claims that the candidate filing fee is the functional equivalent of a poll tax. As the case law confirms under these facts and circumstances, that is simply not the case.

In *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996), the Republican Party of Virginia employed a practice of charging a registration fee as a prerequisite to participation in the process of selecting a candidate for United States Senator. Plaintiffs in that case argued that the imposition of a fee as a condition precedent to participation in the candidate selection process was a poll tax prohibited by the Voting Rights Act of 1965. The Supreme Court ruled that Virginia Republicans and other state political parties must get federal approval before charging a fee to participate in a nominating convention, and the Court also allowed individual voters to challenging the party registration fee on grounds that it is a poll tax. Importantly, there is no registration fee to vote or otherwise participate in the SCGOP primary. All registered voters in South Carolina are eligible to vote in the election, without any payment of a fee or tax. Therefore, the *Morse* case provides no foundation for Plaintiff's claims.

Similarly, the Supreme Court's decision in *Lubin v. Panish*, 415 U.S. 709 (1974) offers Plaintiff no refuge. In that case, the Court held that a State may not, consistent with constitutional standards, require from an ***indigent*** candidate filing fees that he ***cannot pay***; denying a person the right to file as a candidate solely because of an ***inability to pay*** a fixed fee, without providing any

alternative means, is not reasonably necessary to the accomplishment of the State's legitimate interest of maintaining the integrity of elections. *Lubin*, pp. 415 U. S. 712-719 (emphasis added). As Plaintiff has admitted and acknowledged in his pleadings, he has not claimed an inability to pay the candidate filing fee in South Carolina. Rather, he has simply argued that he is unwilling to pay the fee. Accordingly, because Plaintiff is admittedly not an indigent candidate, his claim has no merit under *Lubin*.

Simply put, the candidate filing fee is not a poll tax under *Morse* because it has no impact on the ability of voters in South Carolina to cast ballots in the SCGOP primary. Moreover, because Plaintiff is admittedly not indigent and has the ability to pay the filing fee, there is no constitutional violation under *Lubin*. Plaintiff has put forth no arguments or authorities to support his allegations or to refute the established case law in this arena. Therefore, he cannot succeed on the merits in this case and his motion must be denied.

III. PLAINTIFF HAS NOT SHOWN THAT HE WILL SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCTION IS NOT GRANTED, NOR HAS HE ARGUED THAT THE BALANCE OF EQUITIES ARE IN HIS FAVOR.

Plaintiff will suffer no harm if a preliminary injunction is not issued. In fact, Plaintiff has not even alleged irreparable harm will occur if a preliminary injunction is not granted. It his burden to show that he is entitled to injunctive relief, and he has failed to carry that burden. As a result, he has failed to show that he is entitled to preliminary injunctive relief.

IV. THE SCGOP AND THE PUBLIC INTEREST WILL SUFFER SUBSTANTIAL IRREPARABLE HARM IF PRELIMINARY INJUNCTIVE RELIEF IS GRANTED.

In contrast to the nonexistent harms facing Plaintiff, the SCGOP would be subjected to significant and irreparable harm if preliminary injunctive relief is granted. The SCGOP's status as the "First in the South" Republican presidential primary is critically important to the continued

status and vitality of the SCGOP as a leader in presidential politics in our country. An order enjoining the SCGOP primary would cause irreparable harm to the SCGOP from which it would likely never recover. Similarly, the citizens of South Carolina deserve an opportunity to vote on the Republican nominee for President of the United States. An injunction in this frivolous case would destroy that opportunity, thereby causing irreparable harm to the public interest as well.

CONCLUSION

Plaintiff has failed to carry his burden in this matter. Moreover, the balance of harms tips decidedly in favor of the SCGOP. It is also clear that preliminary injunctive relief is not in the public interest. For all of these reasons, Plaintiff has not demonstrated that he is entitled to a preliminary injunction, and the SCGOP respectfully requests that the Court deny Plaintiff's motion for preliminary injunction and dismiss this action in its entirety for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), Fed.R.Civ.P.

Respectfully submitted,

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Columbia, South Carolina

November 16, 2015

CERTIFICATE OF SERVICE

I, Karl S. Bowers, Jr., hereby certify that on November 16, 2015, I served Defendant South Carolina Republican Party's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction/Rule 12(b)(6) Motion to Dismiss with the Clerk of Court using the CM/ECF system in case number 3:15-cv-3669-JFA-SVH, and on the same date sent notification of the filing to the following *pro se* Plaintiff:

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